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Before the
Federal Communications Commission
Washington, DC 20554

FILED/ACCEPTED

In the Matter of)
)
Amendment of Section 73.622(b);)
Table of Allotments;)
Digital Television Broadcast Stations.)
(Augusta, Georgia))

MAY 19 2011

Federal Communications Commission
Office of the Secretary

MB Docket No. 11-54
RM-11624

REPLY COMMENTS

Southeastern Media Holdings, Inc. ("Southeastern"), permittee of WFXG(DT)¹, Augusta, Georgia, by its attorneys, hereby respectfully submits its Reply Comments with regard to the *Notice of Proposed Rule Making*, DA 11-499, released March 16, 2011 ("NPRM"), which proposes to substitute DTV Channel 51 for DTV Channel 31 as Station WFXG's post-transition digital channel. With respect thereto, the following is stated:

As previously stated in this proceeding, WFXG's originally allotted DTV channel was Channel 51, and Southeastern built DTV facilities on that channel and filed a license application to cover those facilities. While there was some initial confusion as to the antenna to be used, WFXG subsequently was granted a construction permit reflecting the exact facilities constructed and specified in the license application, and the station has been operating with those facilities ever since. In the interim, however, Southeastern sought and was granted a change in the DTV allotment to Channel 31. While WFXG fully intended to construct new Channel 31 facilities, intervening events, such as the severe downturn in the economy, made it impossible to complete such construction before the expiration of its Channel 31 permit. In its Comments in this

¹ While WFXG(TV) previously was licensed on analog Channel 54, the station's DTV license application remains pending, as is the case for many DTV facilities.

proceeding, Southeastern demonstrated that maintenance of the status quo through a return to a Channel 51 allotment would serve the public interest.

In response to the *NPRM*, CTIA - The Wireless Association® (“CTIA”), Cavalier Wireless, LLC and Continuum 700 LLC, jointly (the “Joint Parties”), and Gray Television Licensee, LLC (“Gray”) also filed comments. Gray’s comments support the proposed re-allotment of Channel 51 as requested by Southeastern and further propose that its own station, WRDW, be allowed to revert to its interim digital channel 31, thereby improving service to viewers and adding public interest benefits.

CTIA and the Joint Parties, however, oppose the re-allotment of Channel 51 to Augusta so that WFXG may continue its current operations. In so doing, CTIA and the Joint Parties emphasize the possible benefits of potential new services that have yet to be rolled out and completely discount the existing and long-standing service to the public provided by television stations in the market. Moreover, their arguments treat WFXG’s proposed Channel 51 allotment as if it were something new, but such is not the case, as Channel 51 was WFXG’s originally allotted DTV channel, and it has operated on that channel throughout the DTV transition and ever since. CTIA’s and the Joint Parties’ claims of uncertainty created by the presence of a Channel 51 facility in the Augusta market also are specious, since the need to protect Channel 51 operations and the existence of WFXG’s Channel 51 operation both were known at the time of the A Block auction, and WFXG has at no time changed or proposed to change its transmitter location. Indeed, the continued operation of WFXG on Channel 51 would prevent other Channel 51 operations from entering the market and thus would *decrease* uncertainty. Accordingly, there is no uncertainty here, but only a naked grab for rights to more spectrum than the Joint Parties and CTIA’s members purchased.

It must be remembered that while CTIA has filed a petition seeking restrictions on the use of Channel 51 by television stations, and while a number of comments have been filed in that regard, both *pro* and *con*, no such restrictions have been adopted, nor has a notice of proposed rule making been adopted. Thus, the current rules and policies governing the relative rights and responsibilities of 700 MHz licensees and television licensees remain in place unchanged. From the outset, the Commission's rules have made it clear that new 700 MHz licensees would be responsible for protecting core DTV operations, "including those on Channel 51," and that the need for such protection "will continue indefinitely." *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, GN Docket No. 01-74, 17 FCC Rcd 1022, 1033 (2002) ("Lower 700 MHz Reallocation Order"). At the same time, the Commission also specifically rejected creation of a guard band between the respective services, instead choosing to "rely on our interference protection criteria to ensure that new licensees adequately protect core TV channel operations." *Id.* The Commission's conclusions with regard to these interference issues were codified in Section 27.60 of the Commission's rules.

Furthermore, the Commission has already spoken to the precise issue at hand. In 2004, the Commission considered the matter and explained that Channel 51 is among the core channels reserved for broadcast use, and declared it did *not* believe that "use of channel 51 for broadcast purposes should be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51." *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, 18334 (2004). The Commission further specifically cautioned A-Block applicants to develop their bidding strategies based on a thorough investigation and

understanding of “all technical and marketplace factors that may have a bearing on the value of 700 MHz licenses.” Public Notice, *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, DA 07-4171, AU Docket No. 07-157, at ¶¶ 39-40, 44 (Oct. 5, 2007).

Thus, at the time of the A Block auction in January - March of 2008, the bidders/future licensees had full and fair warning of the Commission’s policies in general with regard to Channel 51 protection. Moreover, the Joint Parties knew or should have known of the presence of WFXG on Channel 51 in the Augusta market at the time that they were bidding on the A Block licenses. That auction, Auction 73, closed on March 20, 2008. Public Notice, *Auction of 700 MHz Band Closes*, DA 08-595, released March 20, 2008. At that time, WFXG had a pending license application and a granted construction permit for the same Channel 51 facilities that it is now using. Southeastern did not even file its proposal to change to Channel 31 until June 20, 2008, some three months later. Thus, what each of the Joint Parties bargained for was a Block A license, subject to express Channel 51 protection requirements, in a market with an existing Channel 51 DTV station. That is precisely what each of them got, and the situation remains the same to this day, as WFXG has operated its Channel 51 DTV facilities ever since. While Southeastern did, in the interim, propose a modification that might have improved the value of the Joint Parties’ Block A licenses, they are in no way injured by a continuation of the *status quo* for which they bargained. If the Joint Parties did not fully understand what they were buying, then they have only their own due diligence, or lack thereof, to blame. Their arguments are reminiscent of a person who purchases a house near an airport then complains that he cannot move in until airport operations are changed to stop the noise. Such complaints should be rejected out of hand.

Further, what WFXG is requesting in this proceeding is a continuation of the *status quo*. The allotment of DTV Channel 51 at Augusta is anything but new. As noted above, Channel 51 was WFXG's initial DTV allotment. WFXG has continued operating in accordance with its Channel 51 license application throughout the DTV transition and ever since then. While it did seek and was granted a channel change to Channel 31, during the time it was preparing to implement that change, and since WFXG has determined that it will not be financially possible to go forward with that modification, the station has operated on Channel 51. WFXG has now proposed simply that its underlying allotment once again be conformed with its pending license application and existing operations. Thus, whatever the Commission may decide about potential changes in its future policies with regard to Channel 51, it should go ahead with the restoration of WFXG's Channel 51 DTV allotment. Under the circumstances, action on the instant *NPRM* would not in any way pre-judge the outcome of the CTIA petition and should be taken at once without regard to that proceeding.

CTIA and the Joint Parties complain about uncertainty in the implementation of the Block A licensed facilities, but there is no uncertainty in this particular case. As noted above, WFXG's Channel 51 operation was in place at the time of the A Block Auction, and its continued operation has been in place at the same location ever since. Continuation of that operation would promote stability, as it would preclude other parties from seeking other Channel 51 facilities in the area in accordance with the Commission's rules and policies.

The Joint Parties also make the rather fanciful argument that allowing anyone to obtain an authorization on Channel 51 would encourage television broadcasters to seek to change their facilities to Channel 51 solely to attempt to reach a settlement with wireless carriers. As a station which is painfully aware of the high costs of building facilities on a new channel, WFXG

questions whether any broadcaster would go to the trouble and expense of changing its channel solely to obtain reimbursement of its expenses for doing so. Still, WFXG would note that despite the Joint Parties' discussion of possible settlements with Channel 51 licensees, and despite their knowledge that one of the primary reasons that WFXG could not complete its proposed channel change was financial, there is no mention of any potential proposal to provide funds to assist WFXG in completing a buildout on Channel 31. This absence of any constructive proposal, while the Joint Parties stand on the sidelines and throw verbal rocks, makes WFXG wonder just how much of a sense of urgency the Joint Parties feel with regard to implementation of their Block A service.

It should be noted that while the Joint Parties and CTIA members are discussing potential, future services, WFXG and other broadcasters are providing actual service today. Just as CTIA and the Joint Parties claim concern about stability for their roll out of new services, TV broadcasters such as WFXG must concern themselves with continuation of services to existing viewers. Grant of the reallocation of WFXG's DTV channel, as proposed herein, would contribute to that service to the public and would allow the station to continue operating in the public interest. In addition, as set forth in Gray's comments, it additionally would provide the opportunity for Gray's WRDW to improve service to its viewers.

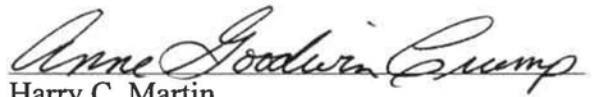
The Petition for Rulemaking attached to Gray's comments and filed on May 3, 2011, states that since WRDW transitioned to its final digital channel, VHF Channel 12, many of its viewers have been having significant difficulties in receiving the station. Although Gray states that its staff has worked diligently with WRDW viewers to resolve their reception problems, it has become clear that the only way effectively to do so is to make a change to a UHF channel, such as Channel 31. Moreover, Gray previously operated on DTV Channel 31 and therefore

could make that change with relative ease, speed, and economy. As a result, existing viewers of the station would be able expeditiously to have television reception improved or restored to them.

Thus, grant of the proposed reallocation of Channel 51 as requested clearly would serve the public interest without any significant detriments. Not only would that reallocation allow WFXG to continue to deliver its existing and long-standing service to the public, but it also would make room for another operating station to improve its ability to serve its viewers and, in some cases, to restore service. This result would not in any way injure Block A licensees, as it represents only maintenance of the *status quo* and is in complete accord with the Commission's currently settled policies.

WHEREFORE, the premises considered, Southeastern respectfully requests that DTV Channel 51 be substituted for DTV Channel 31 at Augusta, Georgia.

Respectfully submitted,
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May 17, 2011

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing REPLY COMMENTS were sent by first class mail, postage prepaid, this 19th day of May, 2011, to the following:

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A handwritten signature in dark ink, appearing to read 'DNL', is written over a horizontal line.

Deborah N. Lunt